

U.S. Officials Held Immune to Suits for Libel

By Timothy S. Robinson
Washington Post Staff Writer

Government officials are absolutely immune from civil lawsuits charging them with common law offenses such as libel or slander they might commit in their official duties, the full U.S. Court of Appeals here ruled yesterday.

The immunity for public workers is necessary to allow them to "speak forthrightly and disclose violations of the law and other activities contrary to the public interest," U.S. Circuit Judge Harold Leventhal wrote in the court's majority opinion.

The ruling does not automatically block private citizens from suing government officials who violate their constitutional rights through false arrests or other such constitutional violations. In those instances, courts have ruled that government workers enjoy only a "qualified immunity" from lawsuits depending on the circumstances in the case.

But yesterday's ruling does prohibit, for example, suits against government

See IMMUNITY, A4, Col. 1

lier opinion sided with the majority yesterday, although saying he had "serious doubts" about the current state of the immunity rule.

The court, in Leventhal's written opinion, said the controlling case in the issue was one released by the Supreme Court in 1959. That ruling basically said that it was more important to protect government officials totally against harassing lawsuits that to protect injured parties from damage to their reputations that might be caused by the public officials' statements.

Absolute immunity, such as that described by the Supreme Court, "further the goal of effective administration of government in the public interest," Leventhal said. A qualified immunity against a libel charge, for example, would "leave an official at hazard to anticipate whether or not he is protected" from such suits instead of knowing for sure that he is protected, the judge said.

The appeals court here conceded that another federal appellate circuit court had ruled the other way on the issue of absolute immunity for public

workers, and pointed out that that ruling has been appealed to the Supreme Court.

Doing away with absolute immunity, however, could "only exacerbate an already serious problem of modern government—the tendency of bureaucrats to sit tight rather than take action likely to rile the individuals or group being regulated," Leventhal said.

The voice of public officials "will be stilled if they perceive or fear that the person involved has the resources of disposition" to bring a lawsuit, he said. Leventhal pointed out that "millions of dollars may turn on regulatory decisions" made by public officials, prompting a possible strong incentive on the part of companies or individuals to counter-attack by filing baseless suits against public officials.

For those reasons, Leventhal said, the doctrine of absolute immunity is preferable to having government officials live in "constant dread of retaliation."

Two of the court's judges, J. Skelly Wright and Spottswood Robinson III, said they were having "increasing dif-

IMMUNITY, From A1

employees who might make derogatory comments about persons or organizations who come in contact with the government.

The 9-to-0 ruling came in a libel suit brought by Expeditions Unlimited against the Smithsonian Institution and Clifford Evans, the chairman of the institution's department of anthropology.

The company said it was libeled by Evans when he wrote a letter critical of the firm's capabilities in the field of underwater archeological excavation. In earlier rulings, both a trial judge and a three-judge federal panel said the Smithsonian was altogether immune from suit for libel charges.

However, the three-judge panel said Evans' personal immunity should be judged on the basis of a "qualified" immunity standard instead of the "absolute" immunity standard that had been applied by the lower court.

When the full court reheard the case against Evans, it reversed the earlier three-judge panel.

Even the judge who wrote the ear-

lier opinion in reconciling the absolute immunity doctrine with other court opinions that accepted the concept of a "qualified" immunity in cases involving constitutional claims.

However, they said they felt the earlier Supreme Court ruling on the subject cited by the majority forced them to accept the absolute immunity concept.

The "suability" of government workers is a "still-developing body of law" that forces judges "to acknowledge a dilemma" in the field of the proper concept to apply in such cases, Robinson said in his concurring opinion.

The Federal Tort Claims Act allows government workers to be sued for traffic accidents and other similar types of cases involving negligence claims that occur on government time, according to attorneys who handle such cases.

However, that act specifically exempted the workers from being sued under common law claims for such crimes as assault, libel and slander, or interference with contract rights that might occur during their official duties.